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2 UNITED STATES DISTRICT COURT
3 WESTERN DISTRICT OF WASHINGTON
4 AT SEATTLE

5 HARMINDER S. SIDHU,

6 Plaintiff,

7 v.

8 JOHN KERRY, Secretary, Department
of State, et al.,

9 Defendants.

C15-1470-TSZ

ORDER

10 THIS MATTER comes before the Court on defendants' motion to dismiss, docket
11 no. 5. Having reviewed all papers filed in support of, and in opposition to, defendants'
12 motion, the Court enters the following order.

13 **Background**

14 Plaintiff Harminder Sidhu is a resident of Washington who filed a Form I-130
15 Petition for Immigrant Visa on behalf of his sister, Davinder Kaur Samra. That petition
16 included Ms. Samra's husband and son as derivative beneficiaries. Once USCIS
17 approved the I-130, it forwarded the petition to the State Department which conducted
18 interviews of Ms. Samra and her family in India in order to determine visa eligibility.
19 After conducting interviews, the State Department, via its consulate in New Delhi, India,
20 refused to issue visas to Ms. Samra and her family. The consulate informed them that
21 they were ineligible for a visa pursuant to 8 U.S.C. § 1182(a)(3)(B). That section makes
22 aliens with certain connections to terrorism ineligible for admission. The consulate
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1 provided no other information other than citing to that section. Soon thereafter plaintiff
2 brought this suit seeking to compel defendants to reschedule the interviews or to provide
3 the factual basis for the finding of inadmissibility under § 1182(a)(3)(B) and provide his
4 sister an opportunity to rebut those determinations. Defendants have moved to dismiss
5 the suit under Rule 12(b)(1).

6 **Standard of Review**

7 The Court must dismiss an action if it determines that it lacks subject matter
8 jurisdiction. Fed. R. Civ. P. 12(b)(1). When the motion to dismiss challenges the
9 allegations of the complaint as insufficient to confer subject matter jurisdiction, the
10 allegations of material fact are considered true and construed in the light most favorable
11 to the nonmoving party. *Fed'n of African Am. Contractors v. City of Oakland*, 96 F.3d
12 1204, 1207 (9th Cir. 1996). However, the party seeking to invoke the limited nature of
13 federal jurisdiction bears the burden of proving that subject matter jurisdiction exists.
14 *Assoc. of Am. Med. Colleges v. United States*, 217 F.3d 770, 778-79 (9th Cir. 2000).

15 **Analysis**

16 *1. Plaintiff Lacks Standing*

17 Standing is a threshold element of subject matter jurisdiction without which
18 plaintiff cannot maintain a suit in federal court. *See White v. Lee*, 227 F.3d 1214, 1242.
19 To satisfy this requirement, plaintiff must show that “he has suffered, or will imminently
20 suffer, a concrete and particularized injury to a judicially cognizable interest.” *Davis v.*
21 *Guam*, 785 F.3d 1311, 1314 (9th Cir. 2015) (internal quotations omitted) (quoting
22 *Bennett v. Spear*, 520 U.S. 154, 167 (1997)). The injury must be “fairly traceable” to
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1 defendants' conduct, such that it is likely that the injury would be redressed by a
2 favorable decision. *Id.* The Court concludes that plaintiff has not suffered an injury to a
3 judicially cognizable interest.

4 Ms. Samra is an unadmitted and nonresident alien, and thus has no right to sue to
5 further press her claim for admission. *See Kleindienst v. Mandel*, 408 U.S. 753, 762
6 (1972). Plaintiff seeks to evade this clear jurisdictional issue by reframing his challenge
7 as based on a violation of his own constitutional rights.¹ Construing the Complaint in the
8 light most favorable to plaintiff, the Court understands the alleged harm to be the
9 separation of plaintiff and his sister. However, there is no liberty interest in the
10 companionship of one's sibling. *See Ward v. City of San Jose*, 967 F.2d 280, 283-84 (9th
11 Cir. 1991); *see also Adeyemo v. Kerry*, 2013 WL 498169, *3 (D. Md. Feb. 7, 2013)
12 (dismissing due process claim brought by sister of alien whose visa application was
13 denied). Plaintiff has not alleged any other possible harm. Lacking a cognizable injury,
14 plaintiff cannot establish standing and therefore the case must be dismissed.

15 2. *Due Process Was Satisfied*

16 Even if plaintiff had a liberty interest sufficiently harmed to satisfy standing,
17 defendants have satisfied their due process burden. In *Kerry v. Din*, the American wife of
18 an unadmitted alien brought a suit challenging the denial of her husband's visa. 135
19 S. Ct. 2128 (2015). Just as in this case, the government denied the visa application by

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21 ¹ Defendants have additionally argued that the doctrine of consular nonreviewability withdraws subject-
22 matter jurisdiction from the Court. While that would be true of a non-admitted, non-resident alien's
23 petition for review of his or her visa application, courts have recognized the existence of jurisdiction
where a U.S. citizen asserts a violation of his or her constitutional rights. *See, e.g., Am. Acad. of Religion*
v. Napolitano, 573 F.3d 115, 125 (2d Cir. 2009) (applying *Mandel* to First Amendment challenge brought
by U.S. citizens against a consular officer's denial of a visa).

1 citing to § 1182(a)(3)(B) without providing further explanation. *Id.* at 2139. Justice
2 Kennedy’s concurrence, which the parties agree controls, held that even if the wife had a
3 liberty interest, “the Government satisfied due process when it notified Din’s husband
4 that his visa was denied under the immigration statute’s terrorism bar, § 1182(a)(3)(B).”
5 *Id.* No more than a bare citation to the basis for denial was necessary, which the
6 government has satisfied in this case.

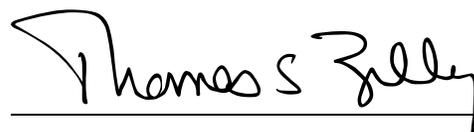
7 Plaintiff is correct that Justice Kennedy’s opinion left available a more searching
8 analysis of the government’s decision where there was “an affirmative showing of bad
9 faith on the part of the consular officer.” *Id.* at 2141. However, plaintiff has failed to
10 allege with particularity how the government denied his sister’s visa application in bad
11 faith. He suggests the failure to provide any specific reasons for the denial “constitutes
12 bad faith actions,” but this argument is foreclosed by *Din*. Beyond that, there is no
13 allegation in the Complaint that could be interpreted as constituting bad faith.

14 **Conclusion**

15 For the foregoing reasons, defendants’ Rule 12(b)(1) motion to dismiss, docket
16 no. 5, is GRANTED. Accordingly, this case is DISMISSED with prejudice. The Clerk
17 is DIRECTED to close this case and send a copy of this Order to all counsel of record.

18 IT IS SO ORDERED.

19 Dated this 26th day of January, 2016.

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22 Thomas S. Zilly
23 United States District Judge